UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**EPA-5-23-113(a)-COE-01**
	)	
Allied Recycling, Inc.	)	**Proceeding Under Sections 113(a)(3) and**
Arcadia, FL	)	**114(a)(1) of the Clean Air Act, 42 U.S.C.**
	)	**§§ 7413(a)(3) and 7414(a)(1)**
	)	

Administrative Consent Order

1. The Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Allied Recycling, Inc. (Allied, or you) under Section 113(a)(3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances.
3. The purpose of 40 C.F.R. Part 82, Subpart F, is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances. *See* 40 C.F.R. § 82.150(a).
4. The regulations at 40 C.F.R. Part 82, Subpart F, apply to persons disposing of appliances, including small appliances, motor vehicle air conditioners (MVAC), or MVAC-like appliances.
5. Under 40 C.F.R. § 82.152, a "person" means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

6. Under 40 C.F.R. § 82.152, an "appliance" means any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner (or "AC unit"), motor vehicle air conditioner, refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.
7. Under 40 C.F.R. § 82.152, an "MVAC" means any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC "means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle." The definition does not include the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.
8. Under 40 C.F.R. § 82.152, an "MVAC-like appliance" means a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. The definition includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles but is not intended to cover appliances using R-22 refrigerant.
9. Under 40 C.F.R. § 82.152, a "small appliance" means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged

terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

10. Under 40 C.F.R. § 82.152, "refrigerant" means, for purposes of 40 C.F.R. Part 82, Subpart F, any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.
11. Under 40 C.F.R. § 82.152, "class I" refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, Appendix A.
12. Under 40 C.F.R. § 82.152, "class II" refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, Appendix B.
13. Under 40 C.F.R. § 82.152, "substitute" means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ozone-depleting substance. Examples include, but are not limited to, hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. As used in 40 C.F.R. Part 82, Subpart F, the term "exempt substitutes" refers to certain substitutes when used in certain end-uses that are specified in § 82.154(a)(1) as exempt from the venting prohibition and the requirements of Subpart F, and the term "non-exempt substitutes" refers to all other substitutes and end-uses not so specified in § 82.154(a)(1).
14. Under 40 C.F.R. § 82.152, "disposal" means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance

such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

15. Under 40 C.F.R. § 82.152, "recover" means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

16. Under 40 C.F.R. § 82.154(a)(1), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter. *See also* Section 608(c) of the CAA, 42 U.S.C. § 7671g(c).

17. Under 40 C.F.R. § 82.155(b), the final processor—*i.e.*, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of small appliances, MVACs, or MVAC-like appliances—must either:

> (1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a), that is, evacuate refrigerant to the levels in § 82.156(b)-(d) using recovery equipment that meets the standards in § 82.158(e)-(g), or 40 C.F.R Part 82, Subpart B, as applicable; or,
>
> (2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.[1]

[1] In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: "EPA notes here that a

18. Under 40 C.F.R. § 82.155(b)(2)(i), it is a violation of 40 C.F.R. Part 82, Subpart F, to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

19. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant (if not recovered by the final processor) must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

20. Under 40 C.F.R. § 82.155(b)(2)(iii), if all the refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. "Leaked out" in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.

21. Under 40 C.F.R. § 82.155(c), a copy of all signed statements and contracts must be maintained in hard copy or in electronic format, for at least three years.

22. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is in violation of any requirement or prohibition of Title VI - Stratospheric Ozone Protection, 42 U.S.C. §§ 7671-7671q. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

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contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor." 81 Fed. Reg. 82272, 82309 (Nov. 18, 2016). *See also*, 58 Fed. Reg. 28660, 28704-05 (May 14, 1993).

23. The Administrator of EPA may require any person who is subject to any requirement of the CAA to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

Findings

24. Allied Recycling, Inc. owns or recently owned scrap recycling facilities at 2347 SW-Hwy 17, Arcadia, Florida 34266 (Arcadia Facility) and 4137 James Street, Port Charlotte, Florida 33980 (Port Charlotte Facility; collectively, "Facilities").
25. Allied is a corporation incorporated in the State of Florida, therefore, Allied is a "person" within the meaning of 40 C.F.R. § 82.152.
26. The Facilities accept for recycling and disposal "small appliances," "MVACs," and "MVAC-like appliances" (collectively, "items") within the meaning of 40 C.F.R. § 82.152, that contain or once contained ozone depleting substances or substitutes.
27. The ozone depleting substances or substitutes in the small appliances, MVACs, and MVAC-like appliances the Facilities accept for recycling are "refrigerants" within the meaning of 40 C.F.R. § 82.152.
28. The Facilities' recycling of small appliances, MVACs, and MVAC-like appliances constitutes "disposal" within the meaning of 40 C.F.R. § 82.152.
29. As a person who, by way of ownership, oversight, permitting, licensure, or other, participated in disposal of small appliances, MVACs, and MVAC-like appliances that contained refrigerants, Allied admits it is subject to requirements at 40 C.F.R. Part 82, Subpart F.
30. On March 5, 2019, EPA conducted an unannounced inspection of the Arcadia Facility.

31. At the time of the inspection, the stated policy of Allied was to not accept any items containing refrigerant, according to the Standard Operating Procedures for the Facility provided to EPA.

32. At the time of the inspection, EPA inspectors observed there was no refrigerant recovery equipment on site. Arcadia Facility representatives stated that they do not recover refrigerant on site and do not have a contractor that recovers the refrigerant on their behalf.

33. At the time of the inspection, Arcadia Facility representatives could not produce verification statements from customers asserting that refrigerant had been properly recovered from small appliances and/or MVACs prior to drop-off in accordance with 40 C.F.R. § 82.155(a). At the time of the inspection, Arcadia Facility representatives said they do not require the general public or their large volume clients to sign and/or submit any paperwork regarding the refrigerant recovery status of the items sold and/or delivered to Allied.

34. At the time of the inspection, EPA inspectors observed refrigerators and AC units with intact lines in the processing area. EPA inspectors observed one AC unit actively venting refrigerant in the scrap pile.

35. On March 23, 2021, and again on April 7, 2021, EPA issued to Allied a Finding of Violation (FOV) alleging that it violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F, at its Arcadia Facility. EPA received no response from Allied.

36. On April 29, 2021, EPA re-issued to Allied the same FOV.

37. On July 9, 2021, representatives of Allied and EPA discussed the April 29, 2021 FOV (FOV conference).

38. At the FOV conference, Allied stated it stopped accepting one-off transactions from peddlers and instead accepts material only from commercial suppliers. Allied stated it still does not accept material containing refrigerant.

39. At the FOV conference, Allied agreed to also implement at the Port Charlotte Facility any changes that Allied makes at the Arcadia Facility to return the Arcadia Facility to compliance.

40. After the FOV conference, Allied corresponded with EPA about preparing a verification statement for peddlers to sign, developing training for employees, and confirming that "the program, inspections, trainings, and commitment to maintain the program will be implement[ed] at [the Facilities]."

41. By failing to recover refrigerants from small appliances such as AC units in accordance with 40 C.F.R. § 82.155(a), and by failing to verify using a signed statement or a contract that refrigerant that had not leaked previously had been recovered, Allied was in violation of 40 C.F.R. § 82.155(b) at the Arcadia Facility.

Compliance Program

42. By the effective date of this Order, Allied and its assignees and successors must achieve, demonstrate, and maintain compliance with 40 C.F.R. Part 82, Subpart F, as well as implement additional actions to ensure compliance with Subpart F, at its facilities in Arcadia and Port Charlotte, Florida. This includes, but is not necessarily limited to, Allied and its assignees and successors taking the following actions in paragraphs 43 through 53, below, at each facility, by the dates specified.

43. By the effective date of this Order, Allied and its assignees and successors must either reject appliances containing refrigerant, or purchase for each facility refrigerant recovery

equipment for small appliances that meets the requirements of 40 C.F.R. § 82.158. Prior to using any refrigerant recovery equipment, Allied and its assignee and successors must properly train at least two employees at each facility on how to use this equipment to meet the standards at 40 C.F.R. § 82.156. Only trained Allied, assignee or successor employees will utilize recovery equipment used to properly recover any refrigerant and substitutes from intact small appliances, MVAC, or MVAC-like appliances on site in accordance with 40 C.F.R. § 82.155(a).

44. By the effective date of this Order, if for any intact small appliance, MVAC, or MVAC-like appliance Allied or its assignee or successor opts to contract out for the services of a trained individual or third-party recovery service to recover refrigerant and substitutes, Allied must retain all copies of receipts for at least three years after the transaction.

45. By the effective date of this Order, Allied and its assignee and successor must comply with the following when accepting any small appliance, MVAC, or MVAC-like appliance from (a.) commercial suppliers or (b.) one-off transactions, *i.e.*, peddlers:

    a. Allied and its assignee and successor may use contracts with only those commercial appliance suppliers with whom Allied or its assignees or successor has maintained long-standing relationships and who Allied or its assignees or successor reasonably believes can enter such contracts in good faith. Such contracts must meet the requirements of 40 C.F.R. § 82.155(b)(2) and reflect, at minimum, the contract wording provided in Attachment A, unless applicable law later requires adoption of alternative wording. Allied and its assignees and successors must discontinue contracts with commercial appliance suppliers who fail to comply with the requirements of 40 C.F.R. § 82.155(b)(2), who fail to uphold their contract, or who

provide false statements regarding refrigerant recovery; or, Allied or its assignees or successors must require documentation from the commercial supplier certifying that the noncompliance or false statements have been corrected and Allied or its assignees or successors now reasonably believes that the commercial supplier is performing the contract in good faith and is fully complying with the requirements of 40 C.F.R. § 82.155(b)(2). Pursuant to 40 C.F.R. § 82.155(b)(2)(i), it is a violation of 40 C.F.R. Part 82, Subpart F, to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

b. For each small appliance, MVAC, or MVAC-like appliance Allied or its assignee or successor accepts from a non-contracted supplier, Allied or its assignee or successor must take the actions set forth below, and complete and maintain for a minimum of 3 years the form provided in Attachment B, with the exception of instances described in Paragraph 45.b.iii, which require use of the form provided in Attachment C;

    i. If Allied or its assignee or successor accepts any intact small appliance, MVAC, or MVAC-like appliance from a non-contracted supplier, Allied must properly recover any refrigerant or have the refrigerant properly recovered by a third-party recovery service, in accordance with 40 C.F.R. § 82.155(a). If the individual conducting recovery is an employee of Allied, Allied must ensure that the individual has been properly trained to use the refrigerant recovery equipment, and Allied must send the recovered refrigerant to an EPA-certified entity for reclamation or destruction;

ii. If Allied or its assignee or successor accepts a small appliance, MVAC, or MVAC-like appliance from a non-contracted supplier with non-intact lines, Allied must first obtain a signed verification statement from the supplier that meets the requirements of 40 C.F.R. § 82.155(b)(2), as provided in Attachment B, unless later applicable law requires adoption of alternative wording; and,

iii. If Allied or its assignee or successor accepts a small appliance, MVAC, or MVAC-like appliance from a non-contracted supplier and Allied has strong reason to believe refrigerant had "leaked out" as defined by 40 C.F.R. § 82.155(b)(2)(iii), which explicitly excludes deliberate acts such as cutting refrigerant lines, Allied or its assignee or successor must first obtain a signed statement from the supplier that uses the wording provided in Attachment C, unless later applicable law requires adoption of alternative wording. Allied or its assignee or successor must incorporate and employ the training material provided in Attachment D to ensure proper identification of "leaked out" refrigerants.

46. Before scrap operations begin at the facility, Allied or its assignee or successor must update all signage, all documents provided to customers, including, but not limited to, the "Source Control Letter" (Allied's material acceptance policy) and all training materials, to clearly indicate that refrigerant must be properly recovered in accordance with § 82.155(a) if the facility accepts those items under contract or verification statements.

47. Before scrap operations begin at the facility, Allied or its assignee or successor must also update all signage at the Facilities, all documents provided to customers, including, but not

limited to, the "Source Control Letter," and all training materials, to state that the Facilities do not accept cut or damaged refrigerant lines, unless its supplier can certify, using the signed statement or contract required by 40 C.F.R. § 82.155(b), that the refrigerant was properly recovered in accordance with 40 C.F.R. § 82.155(a) prior to cutting or dismantling the refrigerant lines.

48. By the effective date of this Order, Allied or its assignee or successor must reject small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines unless its supplier can certify, using a signed statement or contract as referenced in 40 C.F.R. § 82.155(b)(2), that the refrigerant was properly recovered prior to cutting or dismantling the refrigerant lines.

49. By 30 days after the effective date of this Order, Allied must submit to EPA proof of notifying customers of each facility's up-to-date refrigerant acceptance policy in accordance with Paragraphs 46 and 47. This includes, but is not limited to, photos of facility signage and an updated copy of the "Source Control Letter."

50. By 30 days after the effective date of this Order, Allied must submit to EPA a copy of each facility's updated training manual in accordance with Paragraphs 45(b)(iii), 46 and 47 of this Order.

51. Allied or its assignee or successor must collect copies for submission of third-party recovery service receipts (if any), verification statements, new contracts entered or signed, and "leaked out" statements signed (if any), at 6-month intervals. In the 30 days following the first 6 months after the effective date of this Order, and after one year, Allied must provide to EPA one comprehensive report containing copies of all collected items from the effective period, separated in the report by Facility.

a. The initial timeline is as follows:

i. End of first 6 months after the effective date of this Order, submit report within 30 days

ii. End of first year, submit report within 30 days

52. Allied is subject to submitting these reports pursuant under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1).

53. Allied must send all reports required by paragraphs 49, 50, and 51 this Order by electronic mail to r5airenforcement@epa.gov and Russell.Tess@epa.gov. If you are unable to send a report to these addresses due to email size restrictions or other problems, use these email addresses to make additional arrangements for transmission of the report.

General Provisions

54. Allied consents to the transmission of this Order by e-mail at the following e-mail address(es): ertadamson@aol.com

55. This Order does not affect Allied's responsibility to comply with other federal, state, and local laws.

56. This Order does not restrict EPA's authority to enforce the CAA and its implementing regulations.

57. Failure to comply with this Order may subject Allied to penalties of up to $102,638 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

58. The terms of this Order are binding on Allied, its assignees and successors. Allied must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

59. Allied may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Allied fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

60. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

61. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

62. Allied agrees to the terms of this Order. Allied waives any remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

63. This Order is effective on the date of signature by the Director of the Enforcement and Compliance Assurance Division. This Order will terminate two years from the effective date provided that Allied has complied with all terms of the Order throughout its duration.

Allied Recycling, Inc.

2-10-23

Date

Todd Adamson, Vice President
Allied Recycling, Inc.

United States Environmental Protection Agency

MICHAEL HARRIS

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Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5